

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LYNNE HOUSERMAN,

Plaintiff,

v.

COMTECH TELECOMMUNICATIONS
CORPORATION, FRED KORNBERG, AND
MICHAEL D. PORCELAIN,

Defendants.

No. 2:19-cv-00644-RAJ

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTIONS FOR A
PROTECTIVE ORDER

Related Case No. 2:19-cv-00336-
RAJ

This matter comes before the Court on Plaintiff's Motion for a Protective Order postponing her deposition (Dkt. # 44) and Plaintiff's Motion for a Protective Order requiring her deposition to occur on consecutive days (Dkt. # 50). For the following reasons, Plaintiff's Motion for a Protective Order postponing her deposition is **GRANTED** in part and **DENIED** in part. Dkt. # 44. Plaintiff's Motion for a Protective Order requiring her deposition to occur on consecutive days is **DENIED**. Dkt. # 50.

I. BACKGROUND

Plaintiff Lynne Houserman ("Plaintiff" or "Ms. Houserman") is asserting discrimination, retaliation, and wrongful termination claims against her former

1 employer, Comtech Telecommunications Corporation (“Comtech”), Fred Kornberg, its
2 Chairman, Chief Executive Officer, and President, and Michael D. Porcelain, its Senior
3 Vice President and Chief Operating Officer (collectively, the “Defendants”). Dkt. # 1.
4 In a related action (the “TSYS action”), Telecommunications Systems, Inc. (a Comtech
5 subsidiary) is suing Ms. Houserman and her current employer, Motorola Solutions
6 alleging tortious interference and breach of contract. *Telecommunications Systems, Inc.*
7 *v. Houserman/Motorola Solutions, Inc.*, No. 2:19-cv-00336-RAJ, Dkt. # 1. The two
8 actions have been consolidated for discovery purposes. Dkt. # 30.

9 On June 24, 2019, the parties conducted their Fed. R. Civ. P. 26(f) discovery
10 conference. Dkt. # 27 at 1. The parties have also exchanged initial disclosures and
11 served written discovery requests. *Id.* at 4; Dkt. # 45 at ¶¶ 6-7. To date, both parties
12 have produced some documents in response to these requests, but many of the discovery
13 requests are still outstanding. Dkt. # 47 at ¶ 2.

14 On August 27, 2019, Defendants noticed Ms. Houserman’s deposition for
15 November 21, 2019. Dkt. # 47 at ¶ 9. Plaintiff then noticed Comtech’s 30(b)(6)
16 deposition for October 22, 2019, and in response, Defendants noticed Motorola’s
17 30(b)(6) deposition for October 21, 2019. *Id.* The parties later met and conferred
18 regarding the pending depositions and agreed to postpone the 30(b)(6) depositions until
19 after ESI discovery was exchanged. *Id.* at ¶ 10. Plaintiff requested that Defendants also
20 postpone Ms. Houserman’s deposition, but Defendants refused. *Id.*

21 Plaintiff subsequently filed two motions for a protective order asking the Court
22 to: (1) delay Ms. Houserman’s deposition until Defendants have “substantially
23 completed” their production of documents and ESI, and (2) require that Ms.
24 Houserman’s deposition occur on consecutive days. Dkt. ## 44, 50. The parties
25 represent that they have met and conferred but were unable to reach an agreement.
26
27

II. DISCUSSION

Under Rule 26, the court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The party resisting discovery has the burden of demonstrating why discovery should not be allowed. *Blankenship v. Hearst Corp.*, 519 F.2d 419, 429 (9th Cir. 1975).

a. Timing of Plaintiff’s Deposition

Fed. R. Civ. P. 26(d)(1) mandates that parties cannot seek formal discovery, including depositions, until after they have conducted a Rule 26(f) conference. Parties generally choose the sequence of discovery, unless “the court orders otherwise for the parties’ and witnesses’ convenience and in the interests of justice.” Fed. R. Civ. P. 26(d)(3).

Here, Defendants properly noticed Ms. Houserman’s deposition for November 21, 2019. Dkt. # 52 at ¶ 9. Plaintiff contends, however, that she should not be required to sit for a deposition until Defendants have “substantially completed” their production of documents and ESI. Dkt. # 44 at 12. The Court finds no credible basis for this position.

As an initial matter, a party may not withhold discovery pending receipt of its own requested discovery. Fed. R. Civ. P. 26(d)(2)(B) (“discovery by one party does not require any other party to delay its discovery.”). In addition, Plaintiff brought this suit. It is not “oppressive” or unduly burdensome to require her to sit for a deposition regarding her personal knowledge of her allegations against Defendants, particularly when Defendants have agreed to provide the documents they intend to use prior to the deposition. *See Dykes v. BNSF Ry. Co.*, No. C17-1549-JCC, 2018 WL 1456931, at *2 (W.D. Wash. Mar. 23, 2018) (denying plaintiff’s request to delay deposition until after receiving written discovery from the defendant); *Segal v. Amazon.com, Inc.*, No. C11-

1 0227-RSL, at *1 (W.D. Wash. Mar. 7, 2011) (denying plaintiff's request to postpone his
2 deposition until after it had conducted a deposition of defendant). ¹

3 Plaintiff also argues, however, that it is unfair for Defendants to depose her now
4 before discovery is substantially complete because she will not have adequate
5 opportunity to prepare. Dkt. # 44 at 12. Defendants contend that Plaintiff's concerns
6 are without merit because "the purpose of a fact deposition like this is to question
7 Plaintiff about her personal knowledge about her allegations against Defendants, which
8 she laid out in her Complaint without access to any documents she subsequently has
9 sought in discovery." Dkt. # 46 at 7. The Court agrees. But, as Plaintiff correctly
10 notes, discovery in this case is consolidated with the TSYS action. Dkt. # 48 at 6-7. As
11 such, despite any representations to the contrary, Defendants may also choose to use
12 this opportunity to ask Plaintiff questions about their own claims, for which Defendants
13 have allegedly produced a limited number of documents to Plaintiff. *Id.*

14 Although the Court recognizes that it is within its discretion to deny Plaintiff's
15 motion and order Plaintiff's deposition now without limitation, the interests of justice
16 weigh in favor of delaying Plaintiff's deposition with respect to the claims alleged in the
17 TSYS action. Accordingly, Plaintiff's motion for a protective order delaying her
18 deposition is GRANTED in part and DENIED in part. Defendants may proceed with
19 the previously noticed deposition on November 21, 2019, but questions must be limited
20 to *Plaintiff's* claims and allegations in *this action*, along with any related documents.
21 Defendants may depose Plaintiff on the claims alleged in the TSYS action (in addition
22 to the claims alleged in this action) on the second day of Plaintiff's deposition, which
23 Defendants indicate will occur "after the completion of ESI discovery." Dkt. #53 at 3.

24
25 ¹ Plaintiff also alleges that Defendants have withheld documents and failed to timely
26 respond to her discovery requests. Dkt. # 44 at 5-6. This may very well be true and if
27 Plaintiff has objections to Defendants' compliance with her discovery requests she may
pursue relief in this Court, however, withholding her own deposition testimony is not an
appropriate remedy.

1 **b. Defendants Are Not Required to Depose Plaintiff on Consecutive**
2 **Days**

3 Plaintiff next requests a protective order mandating that her deposition take place
4 on consecutive days. Dkt. # 50. On July 17, 2019, this Court issued an order (stipulated
5 to by the parties) consolidating discovery in this action and the TSYS action. Dkt. # 30.
6 The discovery order provides in relevant part:

7 The parties agree to make reasonable efforts to schedule the deposition of
8 any witness who may be deposed on separate days to schedule such
9 depositions on consecutive days unless otherwise agreed by the parties
and provided that it is possible based on a witness' schedule.

10 Dkt. # 30 at ¶ 5.

11 Plaintiff contends that the text of the discovery order mandates consecutive-day
12 depositions unless consecutive-day depositions are not possible based on the witness'
13 schedule or the parties' agreement. Dkt. # 50 at 4. The Court disagrees. Although the
14 discovery order indicates that parties should make "reasonable efforts" to schedule
15 consecutive-day depositions, the Court does not read this as *requiring* that multi-day
16 depositions occur on consecutive days.

17 Moreover, other than the text of the discovery order, Plaintiff does not offer any
18 other justification for mandating that her deposition take place on consecutive days.
19 Dkt. # 50. Plaintiff appears to work and reside in Seattle. Dkt. # 54 at ¶ 5. Plaintiff
20 does not allege that it would be unduly burdensome or inconvenient for her to sit for a
21 deposition on non-consecutive days. *Id.* As a result, the Court does not find there is
22 good cause justifying a protective order. Plaintiff's Motion for a Protective Order
23 requiring her deposition to take place on consecutive days is DENIED.

24 **III. CONCLUSION**

25 For the foregoing reasons, Plaintiff's Motion for a Protective Order postponing
26 her deposition is **GRANTED** in part and **DENIED** in part. Dkt. # 44. Plaintiff's
27

1 Motion for a Protective Order requiring her deposition to occur on consecutive days is
2 **DENIED.** Dkt. # 50.

3
4 DATED this 15th day of November, 2019.

5
6 
7

8 The Honorable Richard A. Jones
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27